

**SOLICITOR**

TO:	<b>Mail Stop 8</b> <b>Director of the U.S. Patent and Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>JAN - 7 2008</b> <b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
 filed in the U.S. District Court EDMO on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. 4:07cv2087SNL	DATE FILED December 20, 2007	U.S. DISTRICT COURT EASTERN DISTRICT OF MISSOURI
PLAINTIFF  NORTHPOLE USA, LLC		DEFENDANT  HKD GLOBAL, LTD, et al.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 7,222,635		SEE ATTACHED COMPLAINT
2 7,182,092		
3 7,261,116		
4 6,763,841		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
2			
3			
4			
5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK	(BY) DEPUTY CLERK	DATE
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Copy 1—Upon initiation of action, mail this copy to Director    Copy 3—Upon termination of action, mail this copy to Director  
 Copy 2—Upon filing document adding patent(s), mail this copy to Director    Copy 4—Case file copy

51. NorthPole is entitled to recover from HKD statutory damages for every instance of false marking by HKD as set forth by 35 U.S.C. § 292.

**COUNT V**  
**HKD VIOLATION OF §43(a) OF THE LANHAM ACT**  
**15 USC § 1125**

52. NorthPole incorporates by reference the allegations of paragraphs 1-51.

53. HKD competes with NorthPole, selling tents, camping gear, and other outdoor products.

54. HKD made a false statement of fact about its products to potential customers and customers at least by falsely marking the words "PATENT PENDING" upon at least its X-treme Northwest Territory 16' x 14' Vacation Home (Model KMT07040). A photograph of this marking on the HKD product is attached as **Exhibit I**.

55. Upon information and belief, the false statement actually has deceived and/or has a tendency to deceive a substantial segment of the public who view it, whether on display by a retailer or in use by a purchaser, into believing at least that HKD controls or will control intellectual property rights in certain innovative features of market-leading tent products, when in fact such intellectual property rights are controlled by NorthPole.

56. HKD's deceptive "PATENT PENDING" statement is material in that it is likely to influence purchasing decisions.

57. HKD caused the false statement to enter interstate commerce.

58. NorthPole has been or is likely to be injured as a result of HKD's deceptive "PATENT PENDING" statement.

59. Upon information and belief, NorthPole was at least harmed by lost sales and/or lost royalties and is likely at least to continue to lose sales and/or royalties because HKD's false

statement of fact deceives potential customers or customers for tent products into believing that HKD is an innovator of key features of tent products, when in fact NorthPole was the innovator.

60. HKD's deceptive advertising was done intentionally.

61. HKD's knowledge that the "PATENT PENDING" statement was false constitutes the requisite bad faith in publication of patent rights necessary to overcome any potential preemption of this Lanham Act § 43(a) claim by the Patent Act's policy of encouraging publication of patent rights.

**COUNT VI**  
**HKD'S VIOLATION OF THE MISSOURI COMMON LAW TORT OF INJURIOUS**  
**FALSEHOOD**

62. NorthPole incorporates by reference the allegations of paragraphs 1-61.

63. HKD published a false statement of fact about its products to potential customers and customers at least by falsely marking the words "PATENT PENDING" upon at least its Xtreme Northwest Territory 16' x 14' Vacation Home (Model KMT07040). A photograph of this marking on the HKD product is attached as **Exhibit I**.

64. HKD's false statement is harmful to NorthPole's pecuniary interest in sales of NorthPole's patented tent products, in that the false statement implies that HKD is an innovator of key features of tent products, when in fact NorthPole was the innovator.

65. HKD recognized or should have recognized that the false statements were likely to result in pecuniary harm to NorthPole's interests.

66. Upon information and belief, HKD knew that the statement was false because HKD knew that it had no patent applications pending that would encompass the marked article or any related portion of the product.

67. Upon information and belief, NorthPole was at least harmed by lost sales and/or lost royalties and is likely at least to continue to lose sales and/or royalties because HKD's false statement of fact deceives potential customers or customers for tent products into believing that HKD is an innovator of key features of tent products, when in fact NorthPole was the innovator.

68. HKD's knowledge that the "PATENT PENDING" statement was false constitutes the requisite bad faith in publication of patent rights necessary to overcome any potential preemption of this state-law claim by the Patent Act's policy of encouraging publication of patent rights.

WHEREFORE, NorthPole respectfully requests that the Court enter a judgment as follows:

A. That HKD has infringed the '635, '092, '116, and '841 patents under 35 U.S.C. § 271;

B. Permanently enjoining and restraining HKD, its officers, directors, agents, servants, employees, licensees, successors, assigns, those in active concert and participation with them, and all persons acting on its behalf or within its control under 35 U.S.C. § 283 from further acts that infringe the '635, '092, '116, and '841 patents, including, but not limited to, making, using, selling, offering to sell, importing, exporting, advertising, or otherwise using, contributing to the use of, or inducing the use of all infringing equipment produced by HKD;

C. Requiring Defendant to:

1. Send a copy of any infringement decision in this case in favor of NorthPole to each distributor, retailer and wholesale purchaser to whom HKD has sold or otherwise distributed any products found to infringe the '635, '092, '116, and '841 patents, or induced to infringe the '635, '092, '116, and '841 patents, and informing such distributors,

retailers and wholesale purchasers of the judgment and that the sale or solicited commercial transaction was wrongful;

2. Recall and collect from all persons and entities that have purchased wholesale or are distributors or retailers of any and all products found to infringe the '635, '092, '116, and '841 patents that were made, offered for sale, sold, or otherwise distributed by HKD, or anyone acting on its behalf;

3. Destroy or deliver to NorthPole all infringing equipment produced by HKD; and

4. File with the Court and serve upon NorthPole, within thirty (30) days after entry of final judgment in this case, a report in writing and subscribed under oath setting forth in detail the form and manner in which HKD has complied with the Court's orders as prayed for.

D. Awarding NorthPole patent infringement damages and pre-judgment interest pursuant to 35 U.S.C. § 284 including, but not limited to, lost profits and/or a reasonable royalty;

E. Awarding NorthPole treble damages for willful infringement pursuant to 35 U.S.C. § 284;

F. Declaring the case exceptional and awarding NorthPole reasonable costs and attorneys fees pursuant to 35 U.S.C. § 285;

G. Permanently enjoining and restraining HKD and its officers, directors, agents, servants, employees, licensees, successors, assigns, those in active concert and participation with it, and all persons acting on its behalf or within its control from further acts that constitute violations of Section 43(a) of The Lanham Act pursuant to 15 U.S.C. § 1116;

H. Permanently enjoining and restraining HKD and its officers, directors, agents, servants, employees, licensees, successors, assigns, those in active concert and participation with

it, and all persons acting on its behalf or within its control from further acts that constitute injurious falsehoods under Missouri common law;

I. Awarding NorthPole HKD's profits, damages sustained by NorthPole and the costs of this action pursuant to 15 U.S.C. § 1117;

J. Awarding NorthPole damages sustained pursuant to the Missouri common law of injurious falsehood; and

K. Granting NorthPole such other and further relief as justice and equity may require.

### **JURY DEMAND**

NorthPole requests a jury trial.

Dated: December 20, 2007

Respectfully submitted,

/s/ John H. Quinn

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Counsel for Plaintiff NorthPole USA, LLC

Cover Sheet

Case number: 4-07-cv-02087-SNL

Document #: 1 Attachment #: 1

Document behind cover is 10 page(s)

**U.S. District Court**

**Eastern District of Missouri (LIVE)**

**Notice of Electronic Filing**

The following transaction was entered by Quinn, John on 12/20/2007 at 4:08 PM CST and filed on 12/20/2007

**Case Name:** Northpole USA, LLC v. HKD GLOBAL, LTD et al

**Case Number:** 4:07-cv-2087

**Filer:** Northpole USA, LLC

**Document Number:** 1

**Docket Text:**

**COMPLAINT** against defendant HKD GLOBAL, LTD, HKD INTERNATIONAL (HK) LTD with receipt number 0865000000001302099, in the amount of \$350 Jury Demand,, filed by Northpole USA, LLC. (Attachments: # (1) Exhibit A, # (2) Exhibit B, # (3) Exhibit C, # (4) Exhibit D, # (5) Errata E, # (6) Exhibit F, # (7) Exhibit G, # (8) Exhibit H, # (9) Exhibit I)(Quinn, John)

**4:07-cv-2087 Notice has been electronically mailed to:**

John H. Quinn , III jquinn@armstrongteasdale.com, eridyad@armstrongteasdale.com

**4:07-cv-2087 Notice has been delivered by other means to:**

The following document(s) are associated with this transaction:

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

NORTHPOLE USA, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No:
	)	
HKD INTERNATIONAL (HK) LTD. and	)	JURY TRIAL DEMANDED
HKD GLOBAL, LTD.,	)	
	)	
Defendants.	)	

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COMPLAINT

Plaintiff NorthPole USA, LLC (“NorthPole”) brings this action for patent infringement, false patent marking, false advertising under the Lanham Act, and injurious falsehood under Missouri common law against defendants HKD International (HK) Ltd. (“HKD Int’l”) and HKD Global, Ltd. (“HKD Global”) (collectively “HKD”), seeking damages and injunctive relief. NorthPole alleges as follows:

**JURISDICTION AND VENUE**

1. This is an action for, inter alia, patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, alleging infringement of United States Patent No. 7,222,635 (“the ’635 patent”), United States Patent No. 7,182,092 (“the ’092 patent”), United States Patent No. 7,261,116 (“the ’116 patent”), and United States Patent No. 6,763,841 (“the ’841 patent”). Copies of the ’635, ’092, ’116, and ’841 patents are attached hereto as **Exhibits A, B, C and D**, respectively, and are incorporated herein by reference in their entirety.
2. This Court has exclusive subject matter jurisdiction over this action with respect to the claims for patent infringement, false patent marking, and false advertising under the



Lanham Act under 28 U.S.C. §§ 1331 and 1338(a). This Court has supplemental subject matter jurisdiction over this action with respect to the claim for injurious falsehood under Missouri common law under 28 U.S.C. § 1367(a).

3. This Court has personal jurisdiction over defendant HKD Global because HKD Global is a Missouri corporation with its principal place of business in this district. *See Exhibit E*. This Court has personal jurisdiction over HKD Int'l because HKD Int'l has conducted business in this district and has infringed, contributed to the infringement of, and/or actively induced others to infringe NorthPole's patents in this district as alleged in this Complaint.

4. Moreover, HKD Global and HKD Int'l continue to conduct business in this district and infringe, contribute to the infringement of, and/or actively induce others to infringe NorthPole's patents in this district as alleged in this Complaint.

5. Upon information and belief, HKD offered for sale and sold its infringing equipment in at least St. Louis County in the Eastern District of Missouri. Upon information and belief, HKD is continuing to offer for sale and sell its infringing equipment at least within the Eastern District of Missouri.

6. Venue is proper under 28 U.S.C. §§ 1391(b), 1391(c) and/or 1400(b), in that both defendants are corporations subject to personal jurisdiction in the Eastern District of Missouri and thus both defendants reside, for purposes of venue, in the Eastern District of Missouri.

#### **PARTIES**

7. NorthPole is a Delaware limited liability company with its principal place of business located in Franklin County, Missouri. NorthPole engages in business in the United States, including the sale of camping gear such as tents. It is a Missouri resident.

8. HKD Global is a corporation existing under the laws of Missouri, having its principal place of business at 317 Elm Street, Washington, Missouri 63090. On information and belief, HKD conducts business in at least the Eastern District of Missouri.

9. On information and belief, HKD Int'l is a corporation existing under the laws of Hong Kong, having its principal place of business at Room 1103-1105, K. Wah Centre, 191 Java Road, North Point, Hong Kong. On information and belief, HKD Int'l conducts business in at least the Eastern District of Missouri.

### **THE PATENTS-IN-SUIT**

#### **The '635 Patent**

10. The '635 patent entitled "Tent Having an Outer Skirt and Tub Floor" was duly and legally issued on May 29, 2007.

11. Robert Cantwell is the inventor of the '635 patent.

12. NorthPole is the assignee of the '635 patent.

13. The '635 patent is valid and enforceable and has been at all times relevant to the instant action.

#### **The '092 Patent**

14. The '092 patent entitled "Tent Eve" was duly and legally issued on February 27, 2007.

15. Robert Cantwell is the inventor of the '092 patent.

16. NorthPole is the assignee of the '092 patent.

17. The '092 patent is valid and enforceable and has been at all times relevant to the instant action.

**The '116 Patent**

18. The '116 patent entitled "Tent with Extendable Windows" was duly and legally issued on August 28, 2007.

19. Robert Cantwell is the inventor of the '116 patent.

20. NorthPole is the assignee of the '116 patent.

21. The '116 patent is valid and enforceable and has been at all times relevant to the instant action.

**The '841 Patent**

22. The '841 patent entitled "Tent with Extendable Windows" was duly and legally issued on July 20, 2004.

23. Robert Cantwell is the inventor of the '841 patent.

24. NorthPole is the assignee of the '841 patent.

25. The '841 patent is valid and enforceable and has been at all times relevant to the instant action.

**COUNT I**

**HKD PATENT INFRINGEMENT UNDER 35 U.S.C. § 271 OF THE '635 PATENT**

26. NorthPole incorporates by reference the allegations of paragraphs 1-13.

27. HKD has directly or indirectly infringed the '635 patent by making, using, selling, and/or offering for sale at least its Ozark Trail 17' x 11' Family Pentagonal Dome Tent. A copy of a portion of the product packaging for that tent is attached as **Exhibit F**. Inspection of this product has revealed that the "rainskirt" referred to on the product packaging infringes the '635 patent.

28. Upon information and belief, HKD is continuing to make, use, sell, and/or offer for sale tent products which infringe the '635 patent.

29. Upon information and belief, HKD also has contributed to the infringement of the '635 Patent, and/or actively induced others to infringe the '635 patent, in this district and elsewhere in the State of Missouri.

30. HKD has caused and will continue to cause NorthPole substantial damage and irreparable injury by virtue of its continuing such infringement.

31. NorthPole is entitled to recover from HKD the damages sustained by NorthPole as a result of HKD's wrongful acts in an amount subject to proof at trial, and NorthPole is entitled to an injunction preventing HKD from continuing its wrongful acts.

32. Upon information and belief, HKD's infringement of the '635 patent is willful and deliberate.

**COUNT II**  
**HKD PATENT INFRINGEMENT UNDER 35 U.S.C. § 271 OF THE '092 PATENT**

33. NorthPole incorporates by reference the allegations of paragraphs 1-9 and 14-17.

34. HKD has directly or indirectly infringed the '092 patent by making, using, selling, and/or offering for sale at least its X-treme Northwest Territory 16' x 14' Vacation Home (Model KMT07040). A copy of a portion of the product packaging and assembly instructions for that product is attached as **Exhibit G**. Inspection of this product has revealed that the product infringes the '092 patent.

35. Upon information and belief, HKD is continuing to make, use, sell, and/or offer for sale tent products which infringe the '092 patent.

36. Upon information and belief, HKD also has contributed to the infringement of the '092 Patent, and/or actively induced others to infringe the '092 patent, in this district and elsewhere in the State of Missouri.

37. HKD has caused and will continue to cause NorthPole substantial damage and irreparable injury by virtue of its continuing such infringement.

38. NorthPole is entitled to recover from HKD the damages sustained by NorthPole as a result of HKD's wrongful acts in an amount subject to proof at trial, and NorthPole is entitled to an injunction preventing HKD from continuing its wrongful acts.

39. Upon information and belief, HKD's infringement of the '092 patent is willful and deliberate.

**COUNT III**  
**HKD PATENT INFRINGEMENT UNDER 35 U.S.C. § 271 OF THE '116 AND '841**  
**PATENTS**

40. NorthPole incorporates by reference the allegations of paragraphs 1-9 and 18-25.

41. HKD has directly or indirectly infringed the '116 and '841 Patents at a minimum by making, using, selling, and/or offering for sale at least its tent product displayed and described on HKD's website, <http://www.hkdinternational.com/product.php>. The website displays an animation showing the tent product in varying stages of assembly. Printouts of the web page as it existed on December 14, 2007, showing various stages of assembly of the tent product, are attached as **Exhibit H**. Inspection of the varying stages of assembly of the tent product as displayed on the website has revealed that the tent product infringes the '116 and '841 Patents.

42. Upon information and belief, HKD is continuing to make, use, sell, and/or offer for sale tent products which infringe the '116 and '841 Patents.

43. Upon information and belief, HKD also has contributed to the infringement of the '116 and '841 Patents, and/or actively induced others to infringe the '116 and '841 Patents, in this district and elsewhere in the State of Missouri.

44. HKD has caused and will continue to cause NorthPole substantial damage and irreparable injury by virtue of its continuing such infringement.

45. NorthPole is entitled to recover from HKD the damages sustained by NorthPole as a result of HKD's wrongful acts in an amount subject to proof at trial, and NorthPole is entitled to an injunction preventing HKD from continuing its wrongful acts.

46. Upon information and belief, HKD's infringement of the '116 and '841 Patents is willful and deliberate.

**COUNT IV**  
**HKD FALSE PATENT MARKING UNDER 35 U.S.C. § 292(a)**

47. NorthPole incorporates by reference the allegations of paragraphs 1-46.

48. HKD has marked the words "PATENT PENDING" upon at least its X-treme Northwest Territory 16' x 14' Vacation Home (Model KMT07040). A copy of a portion of the product packaging and assembly instructions is attached as **Exhibit G** (previously referenced). Inspection of this product has revealed that at least the "Plastic eave end hub" component (component M in the assembly instructions in Exhibit G) is marked "PATENT PENDING." A photograph of this marking on the HKD product component is attached as **Exhibit I**.

49. Upon information and belief, HKD has no patent or patent application pending that would encompass the "Plastic eave end hub" or any associated portion of its X-treme Northwest Territory 16' x 14' Vacation Home (Model KMT07040), and had no such patent or patent application pending when it marked the article.

50. Upon information and belief, HKD had knowledge when it marked the article that it had and would have no patent or patent application pending that would encompass the "Plastic eave end hub" or any related portion of its X-treme Northwest Territory 16' x 14' Vacation Home (Model KMT07040). Thus, HKD had knowledge of the marking's falsity.